

Appl. No. 09/944,066
Amdt. Dated June 24, 2004
Reply to Office Action of March 24, 2004

REMARKS

This correspondence is in response to an Office Action dated 03/24/2004, in which the Office rejected all pending claims, 1, 6-24, and 29-39. Applicant responds as follows:

The Office rejected claims 1, 6, 7, 9, 11-12, 15-18, 21-23, and 29-39 under 35USC102(b) as anticipated by Bachner's US5,471,906. Applicant traverses the rejection and remarks as follows.

A rejection based on anticipation requires that a single reference teach every element of the claim (MPEP § 2131). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Or stated in another way, a "claim is anticipated only if each and every element as set forth in the claim is found, . . . described in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

It is useful to examine the general construction of the Bachner device as compared to the Applicant's invention. The Bachner body armor, as described in its abstract and elsewhere, consists of or "employs a waterproof/moisture vapor permeable *cover* over flexible armor plating layer or layers...". The Bachner cover is referred to in the trade as the "slip". As is well understood in the trade by those skilled in the art, it is a loosely conforming bag much like a pillow case within which the armor plating or layer is sealed. It is not an intimate or integral layer of the puncture resistance armor, but rather a slip cover providing a simple dirt, dust and in this case water resistant barrier to the highly puncture resistant component within. As is described by Bachner, this assemblage of cover bag and armor plate is further distinct from the vest or cloth carrier worn by the user, which is typically configured with pockets within which the slip covered armor is secured for proper positioning on the body.

Bachner refers as at col. 3, line 20+, to a [carrier] vest 10 with internal pockets for removably retaining the "pads of armor panel 22." As is fully described in Bachner, the vest or carrier is

Appl. No. 09/944,066
Amdt. Dated June 24, 2004
Reply to Office Action of March 24, 2004

configured with the necessary straps, buckles, etc., for proper attachment to the user, and for securing the "pads of armor panel" within the vest pockets. At col. 3, line 42+, Bachner describes his pads of armor panel 22 as comprising the [slip] cover 26, within which is contained the armor layer 28. Again, his pad of armor is distinctly described as having two components, a cover known in the art as a "slip", and the highly specialized armor component within, which supplies the actual puncture resistance to the system.

At col. 4, line 22+, Bachner explains explicitly that armor layers are greatly enhanced by *not* treating the puncture resistant material with any form of waterproofing agent. At col. 4, line 27+, Bachner describes the *cover* component of the assemblage as providing the waterproof yet breathable fabric. All of the balance of column 3 is about the *cover 26* in Fig. 5, and *not* about the armor layer 28, and how the *cover* may be a fabric coated with a breathable polymer so as to provide a microporous membrane and so on. Bachner further describes the cover fabric may be made of Nylon and such materials, which the Office has acknowledged as having a tenacity of less than 10 grams/denier. Bachner's claim 1 then crystalizes the differentiation of the penetration-resistant armor from the cover by its recited elements.

Applicant, in distinction, has described in its specification at page 29 and claimed in its claim 1, and dependent claims 6, 7, 9, 11-12, 15-18, 21-23, and 29-39, a combination of a puncture resistant first layer with high strength fibers of *at least* 10grams/denier, which exceeds and excludes the Nylon and similar materials of Bachner's cover, and indeed is suggestive of armor plating rather than a simple base fabric for a slip cover; with a second layer which is a waterproof, breathable, microporous membrane. This combination, including all of its dependent claim variations, is more than just a different structure than Bachner describes; it defies the conventional logic and express teaching of Bachner as at his col. 4, line 22+, that such treatments of puncture resistant layers is to be avoided.

In summary, the Applicant claims in claim 1 a microporous membrane layer in combination with a high strength, greater than 10 grams/denier, puncture resistant layer, which Bachner teaches away from, preferring a waterproof breathable slip cover for his own separate puncture resistant

Appl. No. 09/944,066
Amdt. Dated June 24, 2004
Reply to Office Action of March 24, 2004

component, as his claims clearly state. Clearly, Bachner cannot be fairly characterized as analogous, element by element, to this Applicant's claim 1 nor to the claims dependent thereon. Clearly, Bachner cannot fairly support a 35USC102 rejection of these claims. For this reason, Applicant requests this rejection be withdrawn with respect to claims 1, 6, 7, 9, 11-12, 15-18, 21-23, and 29-39.

The Office rejected claim 24 under 35USC102/103 as anticipated by or in the alternative as obvious under Bachner. Applicant invokes its prior remarks and comments further as follows. Claim 24 is dependent on claim 1 and is likewise improperly analogized to Bachner. Applicant asserts claim 1 to be allowable for the above cited reasons and claim 24 to be likewise allowable as a further limitation thereon. Applicant urges the rejection be withdrawn for at least this reason.

The Office rejected claims 8, 10, 13-14 under 35USC103 as unpatentable over Bachner. Applicant invokes its prior remarks and comments further as follows.

According to the MPEP §2143.01, "[o]bviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found in either the references themselves or in the knowledge generally available to one of ordinary skill in the art."

The Office attributes Bachner as disclosing the claimed invention except for the elements of claims 8, 10, 13-14, and asserts these elements to have been obvious. Applicant reiterates its opposition to the former presumption, as described in its remarks above, and urges this rejection be withdrawn at least for this reason. Applicant further asserts that the later assumption of obviousness of these elements is based on a mistaken premise and is therefore a faulty assumption and the rejection should therefore be withdrawn for this reason. Applicant further asserts these claims to be further limitations on an allowable claim 1 and therefore allowable for at least this reason. Applicant urges the rejection be withdrawn.

Appl. No. 09/944,066
Amdt. Dated June 24, 2004
Reply to Office Action of March 24, 2004

The Office rejected claims 19 and 20 under 35USC103(a) as being unpatentable over Bachner in view of Thomas et al's US2003/0022583A1. Applicant invokes its prior remarks and states further as follows.

Claims 19 and 20 are further limitations of claims 1, 8 and 9, all of which have been argued to be allowable at least by reason of the serious mischaracterization of the Bachner disclosure.

Applicant asserts again that a fair reading of Bachner does not support this or the prior rejections. Furthermore, in light of the mischaracterization of Bachner, there is no rational basis for combining Bachner with Thomas. There is no teaching, suggestion, or motivation arising from an accurate depiction of the Bachner disclosure or from Thomas for combining or modifying the teachings of these references in a manner revealing of the invention as claimed in 19 and 20. For all these reasons, Applicant urges the rejection be withdrawn.

Applicant believes the above amendments and remarks to be fully responsive to the Office Action, thereby placing this application in condition for allowance. No new matter is added. Applicant requests speedy reconsideration, and further requests that Examiner contact its attorney by telephone, facsimile, or email for quickest resolution, if there are any remaining issues.

Respectfully submitted,



Vernon C. Maine, Reg. No. 37,389
Scott J. Asmus, Reg. No. 42,269
Neil F. Maloney, Reg. No. 42,833
Andrew P. Cernota, Reg. No. 52,711
Attorneys/Agents for Applicant

Cus. No. 24222
Maine & Asmus
PO Box 3445
Nashua, NH 03061-3445
Tel. No. (603) 886-6100, Fax. No. (603) 886-4796
patents@maineandasmus.com